Damodar Das vs. Vishwambhar Dayal & Ors.

SB Civil 1st Appeal No.30/ 1988

Date of Judgment: 07th March, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.M.Mridul assisted by Mr.Sandeep Shah the appellant/s.

Mr.M.K.Garg]
Mr.Rajeev Purohit] for the respondent/s.

Heard learned counsel for the parties.

The plaintiff appellant filed a suit in the court of Additional District Judge, Raisinghnagar against Kishorilal who was his elder brother. In the suit it was prayed for by the plaintiff appellant that a declaration be made that House No.40, A- Block, Raisinghnagar belongs to the joint Hindu Property of the plaintiff and the defendant. Half of the same, therefore, belongs to the plaintiff.

After filing of the suit, the defendant Kishorilal died and his legal representatives were brought on record and they contested

the suit and they came up with the plea that there is no joint family property owned by the plaintiff. Plaintiff was in Government service whereas the defendant Kishorilal was a self employed person. They were living separate and, therefore, there was no question of any joint family property being there. The defendants also submitted that for sometime there was a joint business of brick kiln . That too came to an end because the plaintiff was in Government service and, therefore, he could not have done the business. Therefore, the business came to an end. The plaintiff has not established as to which income of plaintiff and defendant was utilised for construction of the house . Not only this , there is no plea that any joint income was used for construction of the house. The plea is that he constructed the house with his income. The allegation in the suit was that there is no joint income and, therefore, it is contended that the plaintiff is not entitled to any relief as claimed in the suit.

The trial court decided issue No.1 against the plaintiff holding that there was no joint family property, as claimed by the plaintiff . Plaintiff and defendant lived separately and there was no communality or any joint income of both the parities. They lived separate life and there is no existence of any joint Hindu Family. So also the trial court was of the opinion that issue No.2, wherein it

has been claimed by the plaintiff that he had half the share , was negated by the trial court. It was held that the document being in the name of defendant, the property belonged to him exclusively and the plaintiff is not entitled to any share in it.

The trial court also held that the plaintiff is living in the house as a licencee and, therefore, his claim in issue No.3 and 4 was negated and adverse possession was not held proved. The other issues of limitation and the court fees, were not held established in favour of the defendant.

The learned counsel for the appellant, arguing on behalf of the appellant, urged that the property belonged to the joint family. He read the evidence of plaintiff's witnesses. If the evidence of plaintiff's witness is read then it is more than clear that the entire money used for construction and purchase was claimed by plaintiff himself. He has, however, failed to show the source of income. No accounts have been produced and in absence of account it cannot be said that he at all invested any amount in the construction of the house. Mere claiming orally is not considered sufficient to have the title over the property recorded in the name of Kishorilal. No evidence to the contrary, of the oral nature, can be admitted in view

of the provisions of Section 91 of the Evidence Act, 1872.

This Court feels that findings of the trial court on issue No.1 that there is no joint property , deserves no interference. Once this conclusion is arrived at that there is no joint property, then the case of the plaintiff that he had any right in the property cannot be countenanced and, therefore, the declaration as sought by the plaintiff having been refused by the trial court, is held to be rightly concluded because the joint Hindu Property being not there, and the money of plaintiff having not been established by any rendition of account by the plaintiff. It cannot be said that the title recorded in the name of Kishori Lal can be construed to be that of a joint property. In that view of the matter, the findings of the trial court on issue No.2, is not liable to be disturbed.

The plea of adverse possession, in view of the fact that the plaintiff has asked for a permissible title, has not been countenanced by the trial court and rightly so. The possession of the plaintiff had been held to be that of a licencee . The defendant has led evidence to that effect. He is the title holder and on that count also findings on issue No.3 are also not liable to be disturbed.

In that view of the matter , the appeal deserves no merit. There is no force. The appeal is accordingly dismissed.

(BHAGWATI PRASAD), J.

L.George